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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 27 2010

SRC 08 126 51107

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on March 10, 2008, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition, the petitioner was working as a postdoctoral fellow at the Emory Vaccine Center at the Emory University School of Medicine (EUSM). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel argues that the petitioner "has demonstrated that she qualifies for a waiver of the requirement of a job offer and labor certification." Counsel further argues that the director erred by failing to request further evidence before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides:

> If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS [U.S. Citizenship and Immigration Services] in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the record lacks initial evidence or does not demonstrate eligibility, the cited regulation does not require solicitation of further documentation. With regard to counsel's concern, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

> (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner received her Ph.D. in Medicine from Jichi Medical School in Japan in 2005. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

We concur with the director's finding that the petitioner works in an area of intrinsic merit, biomedical science, and that the proposed benefits of her work, research advancements in immunotherapy for cancer treatment, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Along with her published articles, educational qualifications, and other documentation pertaining to her activities and accomplishments, the petitioner submitted several letters of support.

[redacted] EUSM, states:

> [The petitioner] was recruited to Emory University as a postdoctoral fellow . . . . I selected [the petitioner] solely based on her multidisciplinary training in molecular biology, medicine, and cancer research, her command of the English language, her superior intelligence, and varied and gifted skills at the research bench.

* * *

> [The petitioner's] other outstanding contribution to the research field has been her work in establishing a small animal model utilizing microsurgery that has proven to be essential in for both transplantation immunology and cancer research. These skills are extremely delicate and sophisticated, requiring a researcher who is not only very detail oriented and hard working, but also possesses exceptional expertise in anatomy and years of experiences on animal model establishment. [The petitioner] is well qualified to undertake the scientific research of this kind.

With regard to the petitioner's scientific knowledge and research experience, objective qualifications and experience necessary for the performance of a research position can be articulated in an application for alien employment certification. Pursuant to *NYSDOT*, 22 I&N Dec. at 221, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training, education, or experience that could be articulated on an application for employment certification.

[redacted] further states:

> The recent therapy to improve survival and decrease toxicity has focused on immunotherapy to alter body's immune response to tumor cells. To achieve the goal of harnessing the immune system, one approach is to use costimulatory molecules to increase the functional capacity of tumor-specific T cells. For example, the 4-1BB (CD137) Receptor/4-1BB ligand costimulatory pathway is used to promote the activation, expansion, and survival of T cells in mice and humans. Our laboratory in collaboration with my colleague, [redacted] now at Johns Hopkins Medical School have pioneered the use of this pathway for overcoming T cell anergy in tumor bearing animals such that their immune system responds to, and eradicates pre-existing lethal tumors. . . . However, the simultaneous testing of multiple new drug protocols are difficult to initiate in humans because of compounding of unknown variables, financial burden, and unpredictable side-effects. To avoid such complications we have decided to engineer a single molecule that contains at one end a T cell activating ligand and a molecular blocker of T cell suppression at the other end. . . . Creating such a protein became feasible when [the petitioner] joined our laboratory. Her outstanding expertise in molecular biology and her experience in cancer research allowed her to develop a fusion protein, containing functional domains from both 4-1BB ligand and PD-1. This protein provides a positive co-stimulatory signal for T cell activation against the tumor, and at the same time, inhibits the effects of negative immunoreceptors such as PD-1 by protecting activated T cell from apoptosis. [The petitioner] is now testing the function of this recombinant protein in mouse models of metastatic cancer. Her current research is requisite pre-clinical testing, and if successful, an application to the FDA for Phase 1 Clinical Trials for the treatment of cancer patients will be pursued in the near future. . . . If successful therapeutic emerges from our work it will benefit cancer patients worldwide.

[redacted] comments on what could one day result from the petitioner's work in his laboratory rather than providing specific examples of how her past research has already significantly impacted

the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In his letter of support, [redacted] noted that his laboratory collaborates with [redacted] Professor of Dermatology, Oncology and Immunology, Johns Hopkins University School of Medicine. In discussing the petitioner's work, [redacted] states:

> Within the relatively short period of [the petitioner's] doctoral study, she published three first authorship publications in *Oral Medicine Pathology* and *Journal of Experimental & Clinical Cancer Research.* Her work was selected for presentation at various national and international scientific conferences such as American Society of Gene Therapy's 8th Annual Meeting, the 11th Annual Meeting of the Japan Society of Gene Therapy, the 58th Annual Meeting of the Japanese Stomatological Society and the 10th Conference on Cancer Therapy with Antibodies and Immunoconjugates. Evidently this level of productivity and the high quality of her work can be excellent indications of her exceptional research abilities. Let me give some examples. Firstly, [the petitioner] noted that matrix metalloproteinases-2 (MMP-2) expression and activation was unregulated during the progression of oral cancer, and now provides a valuable biomarker for monitoring oral cancer progression. Her observation also provided biochemical insight as to how metastases develop. Later on in her studies, [the petitioner] found that it was possible to tranduce liver cells by intramuscular, or intra-adipose tissue injection of adeno-associated virus (AAV) serotype 8 capsid, a novel vector useful for long-term expression of therapeutic genes in vivo. The results of her study have advanced our appreciation of the molecular basis of AAV transduction, and have significant implications for therapeutic gene delivery. Recently, along with her colleagues at Emory University [the petitioner] demonstrated that chronic T cell costimulation through the CD137 receptor, a molecule targeted on T cells to induce anti-tumor immunity, or reverse autoimmune diseases such as SLE, RA, and EAE induced high levels of proinflammatory cytokines. This in turn led to adverse consequences such as splenomegaly, hepatomegaly, and anemia following in vivo administration of anti-CD137 mAbs illustrating that while this reagent has high therapeutic potential for treating human disease, its use is not without risk and therefore such therapeutic regimens require careful monitoring. Anti-CD 137 mAbs have been shown to induce curative antitumor immunity and entered into clinical trials. This study is the first time in the world to evaluate the adverse reaction of in vivo use of anti-CD 137 mAbs, which is extremely important for the clinical safety and clinical trial design. This paper was recently published in the high profile journal, *Journal of Immunology.*

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted] of the Emory Vaccine Center and Professor, Department of Microbiology and Immunology at EUSM, states:

> Since joining this group, [the petitioner] has been involved in a number of important research projects, especially on the function of CD137(4-1BB), an important T cell co-stimulatory receptor, in regulating the immune system. She is among the first to demonstrate that anti-CD 137-induced activation leads to the production of proinflammatory cytokine, which in turn induces the adverse reactions found in anti-CD 137-treated mice. Anti-human CD- 137 mAbs are entering clinical trial for treating cancer, rheumatoid arthritis, and systemic lupus erythematosus. Knowledge regarding the potential adverse reaction of anti-CD 137 is considerably valuable in guiding trial design and clinical application.
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> * * *
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> At present [the petitioner] is in the middle of her study on the induction of antitumor immunity by a soluble PD-i-4-iBBL fusion protein. . . . [The petitioner's] project is extremely attractive in developing a practical way for curative anti-tumor immunity. The success of her research project may result in the development of new therapeutic reagent against cancer. In order to accomplish such a goal, solid animal manipulation skills, extensive research training in cellular and molecular biology and rich clinical knowledge and background are prerequisite.

[redacted] states that the petitioner is involved in a project that "may result in the development of new therapeutic reagent against cancer." As previously discussed, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, as previously discussed, it cannot suffice to state that the petitioner possesses useful skills or a unique background. Regardless of the petitioner's particular experience or skills, even assuming they are unique, the benefit her skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

[redacted], Department of Biochemistry and Biophysics, University of Pennsylvania School of Medicine, states:

> Prior to joining a laboratory at Emory University, [the petitioner] was actively involved in several research projects in China and in Japan. Using a tumor-bearing animal model, [the petitioner] observed that the expression and activation of matrix metalloproteinase-2 (MMP-2) begins to increase prior to the occurrence of tumor metastasis. These observations indicated the important role of MMP-2, especially activated MMP-2, in the early phase of oral cancer progression. Her work provided valuable information regarding the mechanism of oral cancer metastasis and has significant implications regarding the diagnosis and treatment

> of oral cancers.... [The petitioner's] seminal findings were published in *Journal of Experimental & Clinical Cancer Research.*

The record, however, does not include evidence showing that this work, although published, was frequently cited or has otherwise significantly influenced her field as a whole.

[redacted] further states:

> [The petitioner] . . . joined the lab of [redacted] at Emory University where she has continued to build upon her interest in cancer research. In [redacted] lab she gained the opportunity to learn essential techniques involving cancer cell immunology and viral systems needed to immunize against selected cancers, all important tools in her armamentarium to combat cancer.
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> * * *
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> [The petitioner's] research is clearly cutting edge and requires a highly sophisticated set of skills and knowledge in a broad range of subjects including oncology, immunology, and pharmacology. [The petitioner's] knowledge and expertise in the realms of molecular biology, recombinant protein expression and targeted gene therapy make her an invaluable and indispensable researcher to the national cancer research initiative. Her extensive research experiences across national borders including China, Japan and the United States add a unique ability to forge collaboration and to succeed in her field. Few scientists have reached [the petitioner's] level of expertise or possess her level of promise in her chosen field of study.

It cannot suffice to state that the alien possesses useful skills, or a "unique background." Moreover, simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

[redacted] comments on the petitioner's "level of promise" and states that her work at Emory University "is expected to have important implications for cancer therapy." Similarly, the petitioner's superiors at EUSM, [redacted] indicate that the petitioner's work may result in the development of new therapeutic reagent against cancer. With regard to the witnesses of record, many of them they discuss what may, might, or could one day result from the petitioner's work, rather than how her past research has already influenced the field as a whole. As previously discussed, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49.

[redacted] of Gynecology and Obstetrics, EUSM, states:

> The recent discovery of PD-1 by [redacted], and his extended research group, has led to the development of the novel CD137(4-1BB)-based anti-tumor immunity approach pioneered by [the petitioner]. She is now developing a novel fusion protein to link the functional domains of 4-1BBL and PD-1, which can provide co-stimulatory signals to T cell activation and simultaneously block the negative signals, thus creating a novel tool to enhance T cell activation and anti-cancer immunity.
>
> Before she was recruited to Emory University, [the petitioner] had extensive clinical as well as advanced scientific training; moreover, she demonstrated excellent productivity in her previous work. Her studies in both China and Japan were focused in the areas of mechanism and treatment of oral cancer metastases. Her excellent accomplishments and novel concepts were manifested in high quality papers she published in international journals and conferences, including *Oral Medicine Pathology Journal of Experimental & Clinical Cancer Research, American Society of Gene Therapy's 8th Annual Meeting,* and the *10th Conference on Cancer Therapy with Antibodies and Immunoconjugates.*
>
> Since she joined [redacted] Lab at Emory University in early 2006, [the petitioner] has been the lead investigator in a number of important research projects. . . . . [The petitioner's] effort, dedication and expertise contributed to a recent publication in the highly prestigious *Journal of Immunology* (volume 178:4194-4213, 2007).

In the same manner as [redacted] Chair in Transplantation Immunology, Professor in the Department of Pediatrics, and Chief of the Pediatric Blood and Bone Marrow Transplant Program at the University of Minnesota, also discusses the petitioner's published and presented work. [redacted] states:

> [The petitioner's] research studies are cutting edge and are considered excellent and productive in all respects. These qualities are clearly reflected by her co-authorship of 16 studies that have been published in distinguished professional journals and conferences over the past several years, including *Oral Medicine Pathology, Journal of Experimental & Clinical Cancer Research,* and *Journal of Immunology,* among others.
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> * * *
>
> After she was recruited to [redacted] group in Emory University, [the petitioner] has been involved in the projects studying the function of CD137 (4-1BB), an important T cell co-stimulatory receptor. Anti-CD137 monoclonal antibodies have been shown to induce anti-tumor immunity, and based upon the work of [redacted] and [redacted] are now in human phase 1 clinical trials for treating melanoma, ovarian cancer, and other intractable metastatic diseases. Despite the beneficial effects of this treatment, there still remains a potential adverse reaction in treated individuals. Together with her colleagues, [the petitioner] illustrated the potential deleterious effects caused by chronic anti-CD137 treatment, and using a mouse model described the mechanisms through which anti-CD 137-induced

splenomegaly, hepatomegaly, and anemia. These findings have enhanced our knowledge with regard to the use of anti-CD 137 antibody-mediated therapy, and provided important information for developing safer therapies for its use in clinical cancer therapy. This paper was recently published in *The Journal of Immunology.*

Several of the preceding references, including [redacted] and [redacted] indicate that the petitioner has published and presented her work. We cannot ignore, however, that publication in journals and in conference proceedings is inherent to scientific research.[1] For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's published and presented findings when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by her work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that her work has gone largely unnoticed by her field. The petitioner initially submitted copies of five articles that cite to her work, three of which were self-citations by [redacted] Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The limited number of independent cites submitted by the petitioner at the time of filing is not sufficient to demonstrate that her work had significantly influenced her field as a whole or otherwise sets her apart from other researchers in the biomedical field.

In addition to the letters of support, the petitioner submitted an October 17, 2007 letter informing her that she was "being considered for inclusion into the 2007/2008 *Cambridge Who's Who Among Executives and Professionals "Honors Edition"* of the Registry. . . . Upon final confirmation, you will be listed among thousands of accomplished professionals in the Cambridge Who's Who Registry." The record, however, does not include evidence of the "final confirmation" notice or a copy of the registry edition including the petitioner showing that she had appeared in the registry as of the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Nevertheless, we cannot conclude that appearing as one of thousands of other professionals in a frequently published directory sets the petitioner apart from others in her field or demonstrates her degree of influence in the cancer research field.

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[1] For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition (accessed at http://www.bls.gov/oco/), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." *See* http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm, accessed on April 1, 2010, copy incorporated into the record of proceeding. The handbook also provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm, accessed on April 1, 2010, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS's position that authorship of journal articles does not set the petitioner apart from others in her field; we must consider the research community's reaction to those articles.

The petitioner submitted two certificates from the "Science and Technology Commission of Liaoning Province" (2000 and 2002) stating that her research projects were "confirmed as the Provincial-Level Science and Technology Research Achievement." We acknowledge the petitioner's receipt of these provincial honors; however, there is no evidence showing the national impact of her research findings resulting from these projects. The petitioner also submitted a "Certificate of Honor" stating that she was "named an Outstanding Postgraduate of China Medical University for the academic year of 1996-1997." University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner's student honor is not an indication that she has influenced her field and it offers no meaningful comparison between her and others in the field outside of her university. Moreover, academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *NYSDOT*, 22 I&N Dec. at 219, n.6 (Comm'r. 1998). We cannot conclude that the preceding forms of provincial and institutional recognition demonstrate a level of achievement consistent with some degree of influence on the field as a whole.

The petitioner submitted evidence of her membership in the American Society for Microbiology and the American Association for the Advancement of Science, but there is no evidence showing that admission to membership in these organizations required significant research achievements in her field.

With regard to the submitted awards and memberships, we note that recognition for achievement in one's field and professional association memberships relate to the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. 8 C.F.R. § 204.5(k)(3)(ii). We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.; see also id.* at 222.

The petitioner submitted evidence showing that she reviewed a manuscript submitted to *Head & Neck* in 2007. We note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scientific journals. For instance, the e-mail from Dr. James Cohen of *Head and Neck* to the petitioner states: "Peer review is essential, both for the success of the journal and for the benefit of the authors. Therefore, we ask that you provide comments to both the Editor and the authors." Thus, occasional participation in the peer review process does not automatically demonstrate that an individual has served the national interest to an extent that justifies a waiver of the job offer requirement. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Accordingly, the petitioner's

participation in reviewing a single article in *Head and Neck* as of the petition's filing date does not set her apart from others in her field.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director's decision noted a lack of evidence showing that the petitioner's research "findings have made a significant impact within the field of cancer research."

On appeal, the petitioner submits additional recommendation letters and citation records. The petitioner also submits a May 11, 2009 certificate stating that she was an "Honored Member" who qualified for inclusion in the 2009-2010 Edition of the *Cambridge Who's Who Registry Among Executives, Professionals and Entrepreneurs*, evidence showing that she reviewed a manuscript for *Journal of Experimental & Clinical Cancer Research* in 2009, and documentation from May 2009 indicating that she reviewed and commented on a grant to fund a doctoral program at her alma mater, China Medical University. The preceding certificate and review activity post-date the filing of the petition. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

The petitioner's appellate submission includes citation records from ISI Web of Knowledge reflecting that her most frequently cited article in *Journal of Immunology* had been cited to three times as of the petition's filing date and counsel points out that the petitioner's work has now been cited to 28 times. With regard to the citation history submitted on appeal, we note that more than twenty of the articles citing to the petitioner's work were published subsequent to the filing date of this petition. The limited number of remaining citing articles shows that the petitioner's body of work in the last decade had been minimally independently cited to as of the petition's filing date. This fact is not sufficient to demonstrate that the petitioner's body of work had a significant degree of influence on her field as of March 10, 2008. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider cites to the petitioner's work from April 2008 and later in this proceeding. In this case, at the time of filing, there was not already an established pattern of frequent citation of the petitioner's work. Thus, even if the petitioner had documented a significant later pattern of citation, which we do not concede here, this would not establish that she was eligible for a national interest waiver at the time of filing.

In his letter submitted on appeal, [redacted] University of Navarra, Spain, states:

> Working together with her colleagues, [the petitioner] demonstrated tissue specificity of different serotype of adeno-associated virus (AAV) vectors. . . . [The petitioner] was able to demonstrate significant ectopic liver transduction after *intramuscular* or *intra-adipose tissue injection* of AAV8 vectors. This phenomenon was observed only in AAV8 administration group but not in other serotype AAV vectors (AAV 1 or AAV2), which indicates an unusual

> affinity of the AAV8 capsid for the liver. This study, for the first time in the world, illustrated tissue distribution of AAV8 after *intramuscular* or *intra-adipose tissue injection.* [The petitioner's] study substantially benefits clinical gene therapy by offering a novel and efficient strategy for liver transduction via *intramuscular* or *intra-adipose tissue injection,* which is much less risky than traditional method of portal vein injection. She presented these pioneering findings at *American Society of Gene Therapy's 8th Annual Meeting* in 2005.

However, as previously discussed, the record does not include evidence showing that this work was frequently cited or has otherwise significantly influenced her field as a whole.

[redacted] further states:

> Despite the beneficial effects of anti-CD 137 treatment against cancer, potential adverse consequences following the administration of these antibodies *in vivo* remain unknown. [The petitioner] reported the high levels of proinflammatory cytokines, such as TNF-alpha, IFN-gamma and WN-alpha induced by antiCD 137 antibody treatment. This is the first time to describe the potential side effects of antiCD 137 antibody and explore the mechanisms through which anti-CD 137 induce the potential deleterious effects. An understanding of the potential side effects of anti-CD 137 antibody and the mechanism how it happens is critical for the subsequent development of a safe and effective drug for cancer therapy. This work was reported in another top-ranked journal, *Journal of Immunology.* Within less than a year of its publication, this paper has been cited in at least 10 papers by other researchers published in prestigious international journals . . .

[redacted] continues:

> [The petitioner's] continuous research work has led to a breakthrough discovery on cancer immunology. She found that B cells license CD4+ CD25-T regulatory cells suppress tumor vaccination and the suppression is independent of B cell secreted IL-b, MHC class I or class II expression on B cells. . . . These groundbreaking research findings were submitted to the most influential conference in the field, *7th International Cancer Immunotherapy Meeting* in June [2009] this year, and have been additionally selected for oral presentation from hundreds of abstracts submitted.

[redacted] discusses research findings and a presentation that post-date the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's work that occurred after March 10, 2008 in this proceeding.

In the same manner as [redacted] Faculty of Medicine of the Catholic University of Leuven, and clinical pathologist at the University Hospitals Leuven, Belgium, states that the petitioner's article in the *Journal of Immunology* has been frequently cited by others in her field. As discussed previously, only three articles by other scientists cited to the petitioner's findings in *Journal of Immunology* as of the petition's filing date. The articles citing to the

petitioner's work after March 10, 2008 do not constitute evidence that she was already influential as of that date.

[redacted] further states:

> [The petitioner's] research effort is currently devoted towards understanding the molecular terms how B cells Induce T cell anergy and how it can be reversed through the CD137 costimulatory pathway, which, I believe, will provide even more future national benefits to the United States. [The petitioner] is unique and irreplaceable for this project because this research requires a scientist with the combination of multiple expertise including molecular biology, cancer immunology and especially, high skills in establishing an animal model utilizing microsurgery to perform some delicate and sophisticated surgery, such as splenectomy, on small live animal models. [The petitioner] is one of the very few who possess the expertise and skills needed to carry out this type of research.

As previously discussed, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Moreover, it cannot suffice to state that the petitioner possesses useful skills or a unique background. Regardless of the petitioner's particular experience or skills, even assuming they are unique, the benefit her skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

While petitioner has contributed to research projects at the universities where she earned her advanced degrees and received her postdoctoral training, she has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.